

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0457PUF
Fuel Tax
For Year 2000

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ISSUES

I. Fuel Tax – Civil Penalty

Authority: IC § 6-6-2.5-64; IC § 6-8.1-5-1

Taxpayer protests state's assessment of penalty for use of red dye fuel.

STATEMENT OF FACTS

Taxpayer's truck was stopped and the officer inspected the fuel, observing that it was very black in color, due in part to an engine oil burn-off system on taxpayer's vehicle. A fuel sample was taken and submitted for analysis with the results showing red dye concentration and high sulfur content-evidence of use of non-taxed fuel. Taxpayer protested the assessed fine and the Department notified taxpayer by first class mail on January 29th, 2001 of a hearing set for 10:00 am on February 27, 2001. In telephone calls prior to hearing date, Taxpayer stipulated to the written documentation already submitted as the protest. Thus, this Letter of Findings was prepared based on taxpayer's written protest and documentation provided by both taxpayer and the Special Fuel Tax Division of the Department.

I. Fuel Tax – Civil Penalty

DISCUSSION

IC § 6-6-2.5-64 imposes civil fines of varying amounts (based on the number of prior violations) for the use of non-taxed fuel-identified by red dye- in vehicles operated on Indiana's roads.

IC § 6-8.1-5-1(b) states in relevant part:

.... The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the

proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Taxpayer argues that the fuel used was darkened by the use of a motor oil burn-off system, i.e. a system where a portion of used engine oil is mixed with the fuel to be burned while fresh engine oil replaces it from a reservoir. Taxpayer correctly asserts that this system is in compliance with federal environmental regulations. The substance at issue, red-dye, is not part of engine oil and while the fuel was darkened by the legitimate inclusion of engine oil for burn-off, thus masking the appearance of the red dye in the fuel, the lab results showing both red dye and a high sulfur concentration (which is characteristic of off-road fuel) demonstrate the presence of untaxed fuel. Taxpayer's argument, while explaining the darkness and high pollutant content of the sample, does not refute the lab results and fails to overcome the statutory burden of proof in IC § 6-8.1-5-1(b).

FINDINGS

Taxpayer protest denied.

JM/PLE/MR 010604